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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-6

TO: All Law Enforcement Chief Executives
FROM: Gurbir S. Grewal, Attorney General
DATE: November 29, 2018
SUBJECT: Directive Strengthening Trust Between Law Enforcement and Immigrant Communities

In recent years, the federal government has increasingly relied on state and local law enforcement agencies to enforce federal civil immigration law. This trend presents significant challenges to New Jersey's law enforcement officers, who have worked hard to build trust with our state's large and diverse immigrant communities.

It is well-established, for example, that individuals are less likely to report a crime if they fear that the responding officer will turn them over to immigration authorities. This fear makes it more difficult for officers to solve crimes and bring suspects to justice, putting all New Jerseyans at risk.

It is therefore crucial that the State of New Jersey makes very clear to our immigrant communities something that may seem obvious to those of us in law enforcement: there is a difference between state, county, and local law enforcement officers, who are responsible for enforcing *state criminal law*, and federal immigration authorities, who enforce *federal civil immigration law*.

Put simply, New Jersey's law enforcement officers protect the public by investigating state criminal offenses and enforcing state criminal laws. They are not responsible for enforcing civil immigration violations except in narrowly defined circumstances. Such responsibilities instead fall to the federal government and those operating under its authority.

Although state, county, and local law enforcement officers should assist federal immigration authorities when required to do so by law, they should also be mindful that providing assistance above and beyond those requirements threatens to blur the distinctions



between state and federal actors and between federal immigration law and state criminal law. It also risks undermining the trust we have built with the public.

In August 2007, Attorney General Anne Milgram issued Attorney General Law Enforcement Directive No. 2007-3 (AG Directive 2007-3) to “establish the manner in which local, county, and state law enforcement agencies and officers shall interact with federal immigration authorities.” AG Directive 2007-3 recognized that “enforcement of immigration laws is primarily a federal responsibility,” and that “[t]he overriding mission of [New Jersey] law enforcement officers . . . is to enforce the state’s criminal laws and to protect the community that they serve.” That Directive also acknowledged that “[t]his requires the cooperation of, and positive relationships with, all members of the community,” including immigrants.

Since 2007, technological advances and changes in federal immigration enforcement priorities have rendered AG Directive 2007-3 less effective at “establish[ing] the manner in which local, county, and state law enforcement agencies and officers shall interact with federal immigration authorities.” Today’s new Directive seeks to ensure effective policing, protect the safety of all New Jersey residents, and ensure that limited state, county, and local law enforcement resources are directed towards enforcing the criminal laws of this state.

To be clear, nothing in this new Directive limits New Jersey law enforcement agencies or officers from enforcing state law – and nothing in this Directive should be read to imply that New Jersey provides “sanctuary” to those who commit crimes in this state. Any person who violates New Jersey’s criminal laws can and will be held accountable for their actions, no matter their immigration status.

Similarly, nothing in this Directive restricts New Jersey law enforcement agencies or officers from complying with the requirements of Federal law or valid court orders, including judicially-issued arrest warrants for individuals, regardless of immigration status. For the purposes of this Directive, a “judicial warrant” is one issued by a federal or state judge. It is not the same as an immigration detainer—sometimes referred to as an Immigration and Customs Enforcement (ICE) detainer—or an administrative warrant, both of which are currently issued not by judges but by federal immigration officers. *See, e.g.*, U.S. Immigration and Customs Enforcement Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers (Effective Apr. 2, 2017). Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or detainers issued by federal immigration officers rather than federal or state judges.

Finally, nothing in this Directive prohibits state, county and local law enforcement agencies from imposing their own additional restrictions on providing assistance to federal immigration authorities, so long as those restrictions do not violate federal or state law or impede the enforcement of state criminal law. This Directive does not *mandate* that law enforcement

officials provide assistance in any particular circumstance, even when, by the terms of the Directive, they are *permitted* to do so.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the state in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with the following directives. This Directive repeals and supersedes the provisions of AG Directive 2007-3.

I. Racially-Influenced Policing

No law enforcement officer shall at any time engage in conduct constituting racially-influenced policing as defined in Attorney General Law Enforcement Directive No. 2005-1.

II. Enforcement of Federal Civil Immigration Law

A. *Use of immigration status in law enforcement activities.* Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall:

1. Stop, question, arrest, search, or detain any individual based solely on:
 - a) actual or suspected citizenship or immigration status; *or*
 - b) actual or suspected violations of federal civil immigration law.
2. Inquire about the immigration status of any individual, unless doing so is:
 - a) necessary to the ongoing investigation of an indictable offense by that individual; *and*
 - b) relevant to the offense under investigation.

B. *Limitations on assisting federal immigration authorities in enforcing federal civil immigration law.* Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:

1. Participating in civil immigration enforcement operations.
2. Providing any non-public personally identifying information regarding any individual.¹
3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.
4. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:
 - a) the purpose of the interview;
 - b) that the interview is voluntary;
 - c) that the individual may decline to be interviewed; *and*
 - d) that the individual may choose to be interviewed only with his or her legal counsel present.
5. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
 - a) is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A;
 - b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; *or*
 - c) is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
6. Continuing the detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:

¹ Non-public personally identifying information includes a social security number, credit card number, unlisted telephone number, driver's license number, vehicle plate number, insurance policy number, and active financial account number of any person. *See* N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a). It may also include the address, telephone number, or email address for an individual's home, work, or school, if that information is not readily available to the public.

- a) is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A;
- b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; *or*
- c) is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

Any such detention may last only until 11:59 pm on the calendar day on which the person would otherwise have been eligible for release.

C. *Exceptions and exclusions.* Nothing in Sections II.A or II.B shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from:

- 1. Enforcing the criminal laws of this state.
- 2. Complying with all applicable federal, state, and local laws.
- 3. Complying with a valid judicial warrant or other court order, or responding to any request authorized by a valid judicial warrant or other court order.²
- 4. Participating with federal authorities in a joint law enforcement taskforce the primary purpose of which is unrelated to federal civil immigration enforcement.
- 5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention.
- 6. Asking an arrested individual for information necessary to complete the required fields of the LIVESCAN database (or other law enforcement fingerprinting database), including information about the arrestee's place of birth and country of citizenship.

² As noted earlier, a "judicial warrant" is one issued by a federal or state judge. It is not the same as an immigration detainer (sometimes referred to as an ICE detainer) or an administrative warrant, both of which are currently issued not by judges but by federal immigration officers. Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or civil detainers issued by federal immigration officers.

7. Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities.
8. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it.
9. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources.
10. Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. *See* 8 U.S.C. §§ 1373, 1644.

III. Agreements with the Federal Government

- A. ***Section 287(g) agreements.*** No state, county, or local law enforcement authority shall enter into, modify, renew, or extend any agreement to exercise federal immigration authority pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), unless:

1. The Attorney General grants written approval; *or*
2. The agreement is necessary to address threats to the public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.

No state, county, or local law enforcement officer shall otherwise exercise federal civil immigration authority outside the context of Section 287(g). Nothing in Section II of this Directive shall apply to law enforcement agencies that are party to an agreement to exercise federal immigration authority pursuant to Section 287(g) when they are acting pursuant to such agreement.

- B. ***Intergovernmental Service Agreements.*** Nothing in Section II of this Directive shall apply to law enforcement agencies that are currently party to an Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

IV. Requests for T and U Nonimmigrant Status Certifications

- A. ***Establishing certification procedures.*** Before March 15, 2019, all state, county, and local law enforcement agencies must put in place a set of procedures for processing requests for T- and U-visa certifications (*see* 8 U.S.C. §§ 1101(a)(15)(T) and 1101(a)(15)(U)) from potential victims of crime or human trafficking within 120 days of the request being made. Each police department shall post information about its procedures on its website, or, if the department does not have its own website, then on the municipality's website when feasible.
- B. ***T-visa certifications.*** For T-visa certification requests, each agency's certification procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-914 Supplement B, the requester:
1. Is or has been a victim of a severe form of trafficking in persons; *and*
 2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.
- C. ***U-visa certifications.*** For U-visa certification requests, each agency's procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:
1. Is a victim of a qualifying criminal activity; *and*
 2. Was, is, or is likely to be, helpful in the investigation or prosecution of that activity.
- D. ***Inquiry into and disclosure of immigration status.*** Notwithstanding any provision in Section II, state, county, and local law enforcement agencies and officials may ask any questions necessary to complete a T- or U-visa certification. They may generally not disclose the immigration status of a person requesting T- or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. *See* 8 U.S.C. §§ 1373, 1644.

V. Considerations for Prosecutors

- A. *Initial court appearances.* At a defendant's initial court appearance before a judge, the prosecutor shall confirm that the defendant has been advised on the record that:
1. Potential charges and convictions may carry immigration consequences, *see Padilla v. Kentucky*, 559 U.S. 356 (2010); and
 2. The defendant may have rights to consular notification pursuant to the Vienna Convention on Consular Relations.
- B. *Pretrial detention.* In assessing whether to seek pretrial detention of an arrestee under N.J.S.A. 2A:162-15 to -25, the prosecutor shall make an individualized assessment based on the specific facts presented in each case, and shall not simply assume that a non-citizen presents a risk of flight.
- C. *Admissibility of immigration evidence.* In most instances, evidence of a defendant's immigration status is not relevant to the crime charged or to a witness's credibility and therefore may not be presented to a jury. *State v. Sanchez-Medina*, 231 N.J. 452, 462-63 (2018). In the rare cases where proof of a person's immigration status is relevant and admissible at trial, the prosecutor should not seek to admit such evidence without first raising the issue with the Court outside of the jury's presence, under N.J.R.E. 104, and requesting that the Court give an appropriate limiting instruction.
- D. *Charging, resolving, and sentencing cases.* As in all cases, the prosecutor should be mindful of potential collateral consequences and consider such consequences in attempting to reach a just resolution of the case. Nothing in this Directive shall be construed to require any particular charge or sentence, to limit prosecutorial discretion in reaching a just resolution of the case, or to prevent the prosecutor from making any argument at sentencing.

VI. Notifications and Recordkeeping

- A. *Notifications to detained individuals.* State, county, and local law enforcement agencies and officials shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:

1. To interview the detainee. (*See* § II.B.4.)
2. To be notified of the detainee's upcoming release from custody. (*See* § II.B.5.)
3. To continue detaining the detainee past the time he or she would otherwise be eligible for release. (*See* § II.B.6.)

When providing such notification, law enforcement officials shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.

B. *Annual reporting by law enforcement agencies.* On an annual basis, each state, county, and local law enforcement agency shall report, in a manner to be prescribed by the Attorney General, any instances in which the agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Sections II.B.1 to II.B.6. Each year:

1. Any local or county law enforcement agency that provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year shall submit a report to the County Prosecutor detailing such assistance.
2. Each County Prosecutor shall compile any reports submitted by local or county law enforcement agencies pursuant to Section VI.B.1 and submit a consolidated report to the Attorney General detailing the agencies' assistance.
3. The New Jersey State Police and all other state law enforcement agencies that provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year shall submit a report to the Attorney General detailing such assistance.
4. The Attorney General shall post online a consolidated report detailing all instances of assistance by all state, county, and local law enforcement agencies, as submitted to the Attorney General pursuant to Sections VI.B.2 and VI.B.3, during the prior calendar year.

VII. Training

- A. *Development of training.* The Division of Criminal Justice, shall, within 30 days of the issuance of this Directive, develop a training program to explain the

requirements of this Directive as they pertain to state, county, and local law enforcement agencies and officers. Such program shall be made available through the NJ Learn System or by other electronic means.

- B. ***Training deadline.*** All state, county, and local law enforcement agencies shall provide training to all officers regarding the provisions of this Directive before March 15, 2019.

VIII. Other Provisions

- A. ***Establishment of policy.*** All state, county, and local law enforcement agencies shall, before March 15, 2019, adopt and/or revise their existing policies and practices, consistent with this Directive, either by rule, regulation, or standard operating procedure.
- B. ***Community relations and outreach programs.*** Each County Prosecutor shall undertake efforts to educate the public about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and immigrant communities. Within 120 days of the effective date of this Directive, each County Prosecutor shall report to the Attorney General on such public education efforts.
- C. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the state. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- D. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- E. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or his or her designee.

- F. *Effective date.* In order to give state, county and local law enforcement agencies sufficient time to implement the provisions of this Directive and to conduct the required trainings, this Directive shall become operational on March 15, 2019. Once effective, this Directive shall remain in force unless it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Veronica Allende
Director, Division of Criminal Justice

Dated: November 29, 2018

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-6

APPENDIX A

(Issued November 29, 2018)

For the purposes of Sections II.B.5 and II.B.6, the term "violent or serious offense" is defined as follows:

1. Any first or second degree offense, as defined in N.J.S.A 2C:43-1;
2. Any indictable domestic violence offense defined in N.J.S.A. 2C:25-19;
3. Any other indictable offense listed in the chart below; *or*
4. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described in paragraphs 1-3 above.

Chart of Additional Violent & Serious Offenses
(Referenced in Paragraph 3 Above)

Statute	Description
2C:12-1	Assault
2C:12-1.1	Knowingly Leaving Scene of Motor Vehicle Accident Involving Serious Bodily Injury
2C:12-10	Stalking
2C:12-13	Throwing Bodily Fluid at Officers
2C:14-3	Criminal Sexual Contact
2C:16-1	Bias Intimidation
2C:17-1	Arson
2C:17-2	Causing Widespread Injury or Damage
2C:18-2	Burglary of a Dwelling
2C:24-4	Endangering the Welfare of Children
2C:28-5	Witness Tampering and Retaliation
2C:29-2B	Eluding a Law Enforcement Officer
2C:29-3A(5)	Hindering Apprehension of Another Using Force or Intimidation
2C:29-3B(2)	Hindering Apprehension of Oneself Using Force or Intimidation
2C:29-9	Criminal Contempt (Violation of Restraining Orders, Domestic Violence Orders, Etc.)
2C:40-3B	Aggravated Hazing